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7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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10 KIMOTHY R. McCRAY,)
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17 Plaintiff, a prisoner at Kern Valley State Prison and a frequent litigant in
18 federal court, has filed a pro se civil rights complaint under 42 U.S.C. § 1983
19 alleging harassment and retaliation by correctional staff. Plaintiff seeks to
20 proceed in forma pauperis under 28 U.S.C. § 1915.

21 The Prison Litigation Reform Act of 1995 ("PLRA") was enacted, and
22 became effective, on April 26, 1996. It provides that a prisoner may not bring a
23 civil action or appeal a civil judgment under 28 U.S.C. § 1915 "if the prisoner
24 has, on 3 or more prior occasions, while incarcerated or detained in any facility,
25 brought an action or appeal in a court of the United States that was dismissed on
26 the grounds that it is frivolous, malicious, or fails to state a claim upon which
27 relief may be granted, unless the prisoner is under imminent danger of serious
28 physical injury." 28 U.S.C. § 1915(g). "Section 1915(g)'s cap on prior dismissed

1 claims applies to claims dismissed both before and after the [PLRA's] effective
 2 date." Tierney v. Kupers, 128 F.3d 1310, 1312 (9th Cir. 1997).

3 Plaintiff has had three or more prior prisoner actions dismissed by a
 4 federal district court on the grounds that they are frivolous, malicious, or fail to
 5 state a claim upon which relief may be granted. See, e.g., McCray v. Rodriguez,
 6 No. C 06-4805 CRB (PR) (N.D. Cal. Aug. 18, 2006) (order of dismissal);
 7 McCray v. Rodriguez, No. C 06-5367 CRB (PR) (N.D. Cal. Sept. 7, 2006)
 8 (same); McCray v. Rodriguez, No. C 06-6565 CRB (PR) (N.D. Cal. Oct. 26,
 9 2006) (same). Plaintiff therefore may proceed in forma pauperis only if he is
 10 seeking relief from a danger of serious physical injury which is "imminent" at the
 11 time of filing. See Abdul-Akbar v. McKelvie, 239 F.3d 307, 312 (3d Cir. 2001)
 12 (en banc); Medberry v. Butler, 185 F.3d 1189, 1192-93 (11th Cir. 1999); Ashley
 13 v. Dilworth, 147 F.3d 715, 717 (8th Cir. 1998); Banos v. O'Guin, 144 F.3d 883,
 14 885 (5th Cir. 1998). He is not. Plaintiff's request to proceed in forma pauperis
 15 (doc # 3) accordingly is DENIED.

16 Under the law of the circuit, plaintiff must be afforded an opportunity to
 17 persuade the court that § 1915(g) does not bar pauper status for him. See
 18 Andrews v. King, 398 F.3d 1113, 1120 (9th Cir. 2005). Within 30 days of this
 19 order plaintiff may show cause why § 1915(g) does not bar pauper status for him.
 20 Failure to show cause, or pay the requisite \$ 350.00 filing fee, within the
 21 designated time will result in the dismissal of this action without prejudice to
 22 bringing it in a new paid complaint.

23 SO ORDERED.

24 DATED: November 13, 2006


 25 CHARLES R. BREYER
 United States District Judge